BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT
DATED : 14.06.2018
CORAM:
THE HONOURABLE MR.JUSTICE M.GOVINDARAJ

W.P.(MD)Nos.12701 to 12703 of 2018
and
W.M.P.(MD) Nos.11589 to 11591 of 2018

Tvl.Pioneer Engineering Industries,
rep. by G.Shankar, Partner : Petitioner in all petitions

Vs.

The State Tax Officer,
Thiruverumbur Assessment Circle,
Trichy - 20. : Respondent in all petitions

PRAYER:Writ Petition is filed under Article 226 of the Constitution of India praying for issuance of a Writ of certiorari, calling for the records of the orders of the respondent dated 27.03.2018 in TIN/33213560361/2010-11, TIN/33213560361/2011-12 and TIN/33213560361/2012-13 respectively and quashing the same to the extent that they impose tax and penalty.,

For Petitioner : Mr.A.Srinivasan
For Respondent: Mr.S.Dhayalan,
Government Advocate.

O R D E R

The grievance of the petitioner is that the impugned orders are passed without affording personal hearing to him. On 31.01.2017, revision notices were issued by the respondents. In the revision notices, 15 days time was granted for filing objection and date of personal hearing was fixed as 15.02.2017. However, on the basis of the reply submitted by the petitioner, the time limit was extended upto 28.02.2017. Thereafter, the petitioner had submitted his objections between 08.03.2018 to 16.03.2018 after the receipt of assessment orders. However, without affording any opportunity to the petitioner, the impugned orders came to be passed on 27.03.2018.

2.The learned counsel for the petitioner vehemently contend that as per the circular issued by the Commissioner of Commercial taxes in Circular No.7 of 2014 dated 03.02.2014, where, categorical institutions were given to the Assessment Officers in respect of passing orders, which reads as under:

"a)Passing of Orders: Fifteen days time limit snail be given as reasonable opportunity to dealers before passing any order and it snail be reckoned from the date of service of me notice. No order shall be passed without being satisfied of the reasonable opportunity and adopting the following process.

i)After issue of notice calling for the objections, if any further time is requested by the dealer within a period of fifteen days, it shall be examined and reply to be given to tne dealer regarding granting of time or not as the case may be only if, there exists a genuine reason.

ii)Objections filed by the dealer on the pre assessment / revision notices shall be examined in each and every issue meticulously and speaking order shall be passed addressing the objections raised, in snort, the speaking order which is complete shall be passed.

iii)As the provision in the TNVAT Act stipulates the conditions OF granting or personal hearing. It may be intimated in the notice and it shall invariably be afforded to the dealer irrespective of whether the dealer has opted tor personal hearing or not."

3.In the instant case, the petitioner has filed objection, but, the opportunity of personal hearing was not given to him. This Court has repeatedly held in various cases that whether the dealer files his objection or not, the opportunity of personal hearing shall be given to them.

4.In similar circumstances, a Division Bench of this Court in a batch of Writ Appeals in W.A(MD).Nos.234 to 240 of 2015 [G.V.Cotton Mills (P) Ltd., Vs. The Assistant Commissioner (CT), Avarayampalayam Assessment Circle, Coimbatore] dated 16.03.2018, has held as under:-

<u>Denial of Personal hearing:</u>

"10.The respondent denied the appellant opportunity of hearing only on the ground that objection was not given to the pre-assessment notices. Even if objection was not given, still the assessing authority was expected to post the matter for hearing by issuing notice to the assessee. In case the assessee fail to appear, it is open to the assessment authority to pass orders on merits. We make the position clear that the failure to submit objection to the pre-assessment notice would not give a right to the Assessment Officer to deny opportunity of personal hearing to the assessee.

11.The Hon'ble Supreme Court in Swami Devi Dayal Hospital and Dental College Vs. The Union of India and others [2013 (10) Scale 608] observed that even in the absence of a specific provision of giving hearing, the hearing is required is required in such cases, unless specifically excluded by a statutory provision."

5. In the instant case, it is very apparent that personal hearing was not afforded. In such circumstances, this Court considered that the impugned orders passed by the respondent without affording an opportunity of personal hearing and it is accordingly set aside. The matters are remitted back to the authority for consideration afresh. A direction is issued to the petitioner to appear before the respondent on the date fixed for personal hearing and the respondent shall pass orders on merits after considering the objections and the submissions made before him during personal hearing in accordance with law, within a period of one month from the date of receipt of a copy of this order.

6.These writ petitions are disposed of accordingly. No costs. Consequently, connected miscellaneous petitions are closed.

Sd/-
Assistant Registrar(CS-III)

/True Copy/

Sub Assistant Registrar

To

The State Tax Officer,
Thiruverumbur Assessment Circle,
Trichy – 20.

+3CC to Mr.A.Srinivasan, Advocate, SR.No.68292 to 68294
+1CC to the Special Government Pleader SR.No.68369

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